Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Leased Commercial Access	)	MB Docket No. 07-42
	)	

To: The Commission

PETITION FOR RECONSIDERATION

TVC Broadcasting LLC ("TVC") requests reconsideration of the Report and Order and Further Notice of Proposed Rulemaking[1] released in this proceeding February 1, 2008, for the limited purpose of addressing or clarifying three leased access issues affecting competition, local service and access to government .

A. Competition

The Report and Order makes significant regulatory progress towards equalizing competition among leased access programmers and other programmers carried on cable systems. However it fails to adequately account for the significant economic incentives cable operators have to discriminate against leased access programmers. Specifically, cable operators sell advertising in the programs they place on their channels, advertising which competes with the advertising that supports leased access programming. To the extent cable operators can obstruct or impede viewer access to leased access channels, the cable operator's channels benefit from increased viewership, ratings and, ultimately, increased advertising revenues.

Cable operators recognize their economic interest is in marginalizing leased access channels and many of their methods of avoiding competition from leased access programmers are addressed in the Report and Order. Yet there remain two specific practices the Commission should consider and prohibit. Specifically the Report and Order should be modified to prohibit cable operators from locating free leased access programming within or among the various subscription cable channels or the pay-per-view

[1] 23 FCC Rcd 2909(2008), hereafter the "Report and Order."

channels carried on their cable systems. Subscribers are very unlikely to scan through paid programming channels to find free leased access programming. This type of channel placement is extremely disadvantageous and is calculated to suppress competition in free programming. Accordingly, the Commission should establish specific leased access channel placement requirements which prohibit commingling leased access and pay channels.

Additionally the Commission should require cable operators to treat lease access channels the same way they treat other programming channels with respect to involuntary channel relocations. A stable channel location is essential to all programmers seeking to attract a steady audience. Treating leased access programmers less favorably than others in channel relocations can seriously disadvantage leased access operations. Indeed, moving a channel is extremely disruptive to viewers, even under the best circumstances. When a cable operator forces such a move during a ratings period or without giving a leased access programmer significant advanced notice, it can greatly disrupt the viewership and advertising resources available to support a leased access channel. So apart from the need to treat leased access channels equitably vis-à-vis other programmers, there is a distinct need for reasonable limitations upon the ability of cable operators to reposition established leased access channels without the consent of leased access programmers. At a minimum, the Report and Order should be modified to require cable operators to (a) treat leased access programmers the same as other programmers with respect to channel relocations, (b) give leased access programmers a minimum of four months advance notice of a channel change and (c) prohibit cable operators from relocating a leased access channel during a ratings period.

B. Local Service.

The Report and Order recognized the value of leased access programming in providing local service, but failed to go far enough to facilitate programmers' access to local communities. Specifically cable operators remain free to require a system-wide lease of an access channel, even if a programmer is directing its programming to one or two distinct communities within the cable system.[2] Before the cable industry consolidated, cable systems operated on a community-by–community basis and a requirement to purchase a system-wide access channel would not have been an undue burden on access programmers. But in today's consolidated cable environment, cable systems serve large areas embracing numerous communities, often from a single consolidated headend.

TVC submits that compelling leased access programmers to purchase channels over large areas is a significant economic obstacle to the creation of local programming services on leased access channels. Cable operators insist on perpetuating this type of leased access arrangement, while they, themselves, modify their systems so they can deliver different locally-targeted advertisements, viewable in discrete portions of their systems' service areas. If cable operators can make their facilities available for different advertisements in different portions of a cable system, there is no reason they cannot make the same arrangement with respect to leased access programming. The Report and Order should be modified to provide as follows: If a cable system affords advertisers the option of reaching targeted segments of the cable system's service area, it should provide leased access programmers the option of leasing channels serving the same targeted segments of the cable system.

C. Access to FCC Processes.

The Report and Order makes significant progress in refining fair and equitable processes for resolving leased access complaints, including procedures that afford ample protection of cable operators' confidential information. Unfortunately, the cable industry has adopted the practice of placing oppressive "confidentiality" or "anti-publicity" type clauses into leased access agreements. Often these highly restrictive covenants contain contractual restraints that, on their face, prohibit leased access programmers from invoking FCC processes with respect to their leased access arrangements. These contractual

[2] In this connection, the Report and Order strives to create a form of channel parity among programmers on cable systems, giving them all access to the same types of geographic channel availability. What is missing from the equation is a consideration of the very real ability of many cable systems to provide separate programming on the to individual segments of the cable system's geographic service area. While cable operators may not be making this capability available to programmers, they use it to place separate advertisements on separate segments of a cable system.

provisions, if enforced, would make the FCC's leased access enforcement processes unavailable to leased access programmers.

The Report and Order should be modified to clarify that cable operators are prohibited from enforcing any contractual provision in any agreement that would obstruct, impede or prevent a leased access programmer from invoking the protections of any FCC process, including but not limited to, the FCC's rule making process and the leased access complaint process. Without this type of prohibition in place, the FCC will never be able to review the merits of numerous leased access arrangements. Indeed if the FCC were to deem these confidentiality clauses enforceable, nothing short of a Section 403 inquiry[3] could bring the terms of the affected leased access arrangements to the FCC's attention.

TVC submits that the proposals set out above unquestionably serve the public interest and are, in fact, necessary to preserve the proper operation of the FCC's processes. Accordingly TVC requests that the Commission grant this petition for reconsideration and modify its Report and Order in the manner requested herein.

Respectfully submitted,

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[3] See 47 U.S.C. Section 403.